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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2006

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.47 of 2003

The Commissioner of Income Tax,
Tamil Nadu-III, Madras. ..Appellant

Vs

V.Chinnapandi,
16, V.V. Koil Street,
Periamet,
Chennai-600 003. ..Respondent

Appeal under Sections 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai in I.T.A. No.1594/Mds/1998 dated 24.07.2002, for the assessment year 1995-96 against I.T. Appeal No.220/98-99 dated 24.7.1998 on the file of the Commissioner of Income Tax (Appeals)-XII, Chennai-34 against G.I.No.3709-0/95-06 dated 22.12.1997 on the file of the Assistant Commissioner of Income Tax, City Circle-VII(3), Chennai.

For Appellant : Mrs.Pushya Sitaraman,

For Respondent: Mr.V.Ramachandran, Senior Counsel,
appointed as Amicus Curiae

JUDGMENT

P.P.S.JANARTHANA RAJA J.

This appeal has been preferred by the Revenue, under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal in 'C' Bench, Chennai in ITA No.1594/Mds/1998 dated 24.07.2002 and the appeal was admitted in terms of the following substantial question of law:-

> *"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that the assessee is eligible for full deduction under Section 80-HHC without restricting to the amount received by way of interest were incidental to*

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the export business as fixed deposits is valid in law?"

2. The facts leading to the above question of law are as under:

(i) The assessee is a specified HUF. The assessment year is 1995-96 and the corresponding accounting year ended on 31.03.1995. The assessee filed his return of income on 29.11.1995 admitting a gross total income of Rs.9,66,389/- and claiming deduction of an amount of Rs.9,37,057/- under Section 80-HHC. The case was proceeded under Section 143 (1) (a) and notice under Section 143 (2) was issued. The assessee is engaged in business of export of finished leather. During the year, the assessee had received interest of Rs.2,65,019/- but he had not shown the interest receipt in the credit side of Profit and Loss account. Instead he had debited the interest (net) at Rs.6,59,946/- and the details of interest he had shown is as under:

	Rupees
Interest paid	9,24,967.00
Less: Interest received	2,65,019.00
Interest (Net)	6,59,946.00

(ii) The contention before the Assessing Officer was that, interest receipts are incidental to export business as fixed deposits were made as required by the bank for availing various credit facilities for carrying on the business and so, interest receipt had to be considered as business income, and hence the same was not deductable for the purpose of Section 80-HHC. The Assessing Officer was of the view that the relevant provisions referred to the exclusion of 90% of 'receipts' in the nature of inter alia interest and not income of that nature. Hence he had not taken into account the interest of payment of Rs.9,24,969/-, but reduced the deduction under Section 80-HHC by 90% of the income of Rs.2,65,019/-. Aggrieved by the order of the assessment, the assessee filed an appeal to the first Appellate Authority who confirmed the order of the Assessing Officer. Against that order, the assessee preferred an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal held that, in this case on hand, the net figure of interest is only the payment in a sum of Rs.6,59,946/- and not receipt and hence there is no question of removing any amount out of such net interest payments while computing the deduction under Section 80-HHC. Hence, the Appellate Tribunal set aside the order of the Revenue authorities and directed not to remove any amount towards interest by applying the Explanation (baa) to sub-section (4B) of Section 80-HHC as the net interest resulted only payment in a sum of Rs.6,59,946/- and not any income.

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3. The learned counsel for the Revenue submitted that the relevant provisions referred to the exclusion of 90% of "receipt" in the nature of inter alia interest and not "income" of that nature and further submitted that the intention of the legislature is that, there should be no attempt to deduct any expenditure from the receipts, howsoever related the said expenditure may be to the receipts. The expression "receipts" has been used in the Section and hence, the Assessing Officer was right in not taking into account the interest payment of Rs.9,24,967/- and he is also right in reducing the deduction under Section 80-HHC by 90% of the interest income of Rs.2,65,019/-.

4. There is no representation on behalf of the respondent assessee eventhough notice was served duly on the assessee. The matter involved in the appeal is a very important one and hence, we requested Mr.V.Ramachandran, Senior Counsel to assist the Court as Amicus Curiae. The standing counsel submitted that the interest receipt was considered as a business income and hence, the assessee had not deducted for the purpose of Section 80-HHC, and further stressed the fact that in the present case the net figure of interest, is only the payment in a sum of Rs.6,59,946/- and not receipt and hence there is no question of excluding any amount out of such net interest payments while computing the deduction under Section 80-HHC of the Act.

5. We heard the contention advanced by both the parties. The entire controversy centres around the meaning to be assigned to the language employed in Clause (baa) of the explanation to Section 80-HHC of the Act. The said Clause reads as follows:

> *(baa) "Profits of the Business" means the profits of the business as computed under the head "profits and gains of business or profession" is reduced by:*
> *(1) ninety per cent of any sum referred to in Clauses (iiia), (iiib) and (iiic) of Section 28 or on any receipt by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and*
> *(2) the profits of any branch, office, warehouse, or any other establishment of the assessee situate outside India.*

On a plain reading of the provision, it is clear that what the provision stipulates is that "profits of the business" for the purpose of Section 80-HHC of the Act mean the profits of the business as computed under the head "Profits and gains of business or profession". While computing such profits under the head "Profits and gains of business or profession", if any receipt by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits, the same has to be reduced by 90% from the profits computed as aforesaid. The

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deductions to be made are from the amount of profits so computed and not from the amount computed under any other head of income of that assessee. No reference of net interest mentioned in the said clause. What we have to see is only the nature of receipt as contemplated under the clause. No deduction is permissible. Once the receipt of the interest is known, 90% of the same to be reduced from the profits without deducting any amount. This Court Judgment reported in 260 ITR 304, in the case of K.S.SUBBIAH PILLAI AND CO. (INDIA) PVT. LTD. Vs. C.I.T., held as follows:

> *"The clause does not refer to net interest. It refers, inter alia, to the interest included in the profits and gains of the business or profession.*
>
> *"....."*
>
> *Clause (baa) under the Explanation to Section 80-HHC defines profits of the business as computed under the head "Profits and gains of business or profession". The deductions to be made are from the amount of profit so computed and not from the amount computed under any other head of income of that assessee. The reference to "such profits" in sub-clause (1) of clause (baa) can only be to the profits of the business computed under the head "Profits and gains of business or profession". Addition to prefix "the" to "profits" in clause (baa), while referring to the profits and gains of business or profession makes it clear that it is only the amounts already included in that computation which are now to be reduced to the extent of 90 per cent., if those items are included in sub-clause (1) of that definition."*

The Punjab and Haryana High Court judgment reported in 268 ITR 220 at Page Nos.222 and 223, in the case of Rani Paliwal Vs. C.I.T, held as follows:

> *"This issue relates to the inclusion of interest as part of the assessee's "business income" for working out the deduction claimed under section 80HHC of the Act. The total interest received by the assessee during the relevant assessment year was Rs.6,33,454 and the total interest paid by the assessee was Rs.4,12,982. The Assessing Officer was of the view that 90 per cent of the gross amount of interest of Rs.6,33,454 was liable to be deducted from the profits of the business for the purpose of deduction. He, therefore,*

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reduced the quantum of deduction under Section 80HHC of the Act accordingly. The Commissioner of Income Tax (Appeals), however, took a different view in appeal and allowed 90 per cent of the amount of interest to be deducted after deducting a sum of Rs.4,12,982 which had been paid by the assessee as interest during the assessment year. The Tribunal again affirmed the view of the Assessing Officer holding that 90 per cent of the interest that was deductible for the claim under Section 80HHC of the Act was from the gross interest received by the assessee and that the amount of interest paid by the assessee could not be deducted therefrom. A plain reading of clause (baa) of Explanation to section 80HHC of the Act makes this aspect quite clear and we are of the view that the Tribunal was right in disallowing the claim of the assessee in this regard."

6. The above two judgments support the case of the Revenue. The appellant in the present case had received interest of Rs.2,65,019/- and hence the receipt of interest is alone relevant and the same is to be taken into consideration for the purpose of deduction for the claim under Section 80-HHC of the Act. No expenditure or any other deduction is permissible from the receipt of interest income. Section 80-HHC stipulates a deduction in respect of export profits. Instead of enjoining the Assessing Officer to compute such export profits from out of the consolidated amount of the assessee, which may involve income by way of interest, rent, commission etc., the legislature has provided a simple procedure under which 90% of the receipts such as interest, rent, commission, brokerage etc. shall be excluded as profits and not attributable to exports. The intention is therefore clear that there should be no attempt to deduct any expenditure from the receipts, however, related to such expenditure may be to the receipts. It is in this view of the matter that the expression "receipt by way of" has been used in the section and not "income" of that nature.

7. In view of the above, we are of the view that 90% of the interest that is deductible for the claim under Section 80-HHC of the Act is from the gross interest received by the assessee and that the amount of interest paid by the assessee should not be deducted therefrom and hence, we answer the above question in favour of the Revenue and against the assessee and allow the tax case filed by the revenue. No costs.

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8. We appreciate the learned Senior Counsel Mr.V.Ramachandran for the valuable assistance.

18.01.2006

km

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. THE ASST. REGISTRAR
INCOME TAX APPELLATE TRIBUNAL
RAJAJI BHAVAN, III FLOOR, BESANT NAGAR
CHENNAI-90 (5 copies) (with records)

2. THE SECRETARY,
CENTRAL BOARD OF COMMERCIAL TAXES (3 copies)

3. THE COMMISSIONER OF INCOME TAX,
TAMILNADU-III
CHENNAI.

4. THE COMMISSIONER OF INCOME TAX
(APPEALS XII,
CHENNAI-34.

5. THE ASST. COMMISSIONER OF
INCOME TAX
CITY CIRCLE-VII(3)
CHENNAI.

1 cc to Mrs.Pushya Sitaraman, Advocate, SR. 1501

gm (co)

dv/25.1.06

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